STATE OF MICHIGAN

COURT OF APPEALS

AARON R. SKOWRONSKI,

Plaintiff-Appellant,

v

JOHN LAURIER GORSKI,

Defendant,

and

KEVIN BUTLER and KENNETH BUTLER,

Defendants-Appellees.

UNPUBLISHED
May 8, 2001

No. 219775
Wayne Circuit Court
LC No. 97-712255-NI

PAMELA BELANGER, Personal Representative of the Estate of CAROLYN ANN JUENGEL, deceased,

Plaintiff-Appellant,

v

JOHN LAURIER GORSKI,

Defendant,

and

KEVIN BUTLER and KENNETH BUTLER,

Defendants-Appellees.

No. 219779
Wayne Circuit Court
LC No. 97-713059-NI

Before: Griffin, P.J., and Jansen and Gage, JJ.

PER CURIAM.

In these consolidated appeals, plaintiffs appeal as of right from a judgment entered after a jury verdict in which there was a split verdict. With regard to defendants-appellees Kevin and Kenneth Butler, the jury found no proximate cause and awarded zero dollars to plaintiffs. After entry of judgment, the trial court denied plaintiffs' motions for judgment notwithstanding the verdict (JNOV) or for a new trial. These appeals involve only the Butler defendants.

This case arises out of an automobile accident that occurred in Canton Township at approximately 8:00 p.m. on November 16, 1996, on Warren Road, a two-lane roadway. The circumstances surrounding the accident were disputed at trial. Defendant John Gorski was driving his 1996 Chevrolet Camaro, in which plaintiff Aaron Skowronski was the front seat passenger and plaintiff Pamela Belanger's decedent, Carolyn Ann Juengel, was a back seat passenger. It was undisputed that neither Skowronski nor Juengel were wearing seat belts. Defendant Kevin Butler was driving his father's (Kenneth Butler) 1996 Ford Mustang[1], in which Matthew Sisko was a front seat passenger.

Gorski was driving westbound on Warren and Butler was driving immediately behind. Butler attempted to pass Gorski and, according to Butler, Gorski sped up as if to block Butler from merging back into the westbound lane. Butler increased his speed to about seventy to seventy-five miles an hour, in a posted speed limit of forty-five miles an hour, to pass Gorski. Butler, who was familiar with the road, knew that a dangerous curve was upcoming and knew that he was driving too fast to negotiate the curve. As Butler attempted to merge back into the westbound lane, the vehicle skidded on some gravel, fishtailed, and Butler applied his brakes. The Mustang spun completely around and ended up in the eastbound lane of traffic. As the Mustang spun in front of him, Gorski applied his brakes and steered his vehicle to the right. The Camaro slid off the road onto the gravel shoulder, into a ditch, somersaulted, and then rolled before stopping. Skowronski and Juengel were both ejected from the vehicle. Juengel was killed instantly and Skowronski suffered several crushed vertebrae in his back, which required a spinal fusion and bone graft.

In a special verdict form, the jury found that Gorski was negligent and that his negligence was a proximate cause of both plaintiffs' damages. The jury awarded $1,200,000 to Skowronski, but found him to be ten percent comparatively negligent for failing to wear a seat belt and his award was reduced to $1,080,000. The jury awarded $500,000 to the estate of Carolyn Ann Juengel, and also found her to be ten percent comparatively negligent for failing to wear a seat belt. The award to the estate was reduced to $450,000. With regard to Kevin Butler, the jury found that he was negligent, but that his negligence was not a proximate cause of the plaintiffs' damages. Thus, the jury awarded zero dollars to plaintiff with respect to the Butler defendants.

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[1] In this opinion, use of Butler in the singular will refer solely to Kevin Butler because he was the driver of the vehicle involved in the accident and his father, Kenneth Butler, did not testify at trial and was not otherwise involved except as the leaseholder of the vehicle.

I

Plaintiff Skowronski first argues that the trial court erred in denying his motion for JNOV or a new trial because the jury's verdict regarding the Butler defendants is against the great weight of the evidence. Skowronski contends specifically that the evidence does not support the jury's finding that Butler's negligence was not a proximate cause of Skowronski's injuries.

When reviewing a motion for JNOV, the evidence and all legitimate inferences from the evidence must be viewed in a light most favorable to the nonmoving party. Only if the evidence so viewed fails to establish a claim as a matter of law may a motion for JNOV be granted. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998). Plaintiff alternatively moved for a new trial, arguing that the jury's verdict was against the great weight of the evidence. MCR 2.611(A)(1)(e). This Court's review of a trial court's ruling on a motion for a new trial is for an abuse of discretion. *Bean v Directions Unlimited, Inc*, 462 Mich 24, 34; 609 NW2d 567 (2000). If the jury's findings have support in the record, the court may not substitute its own view of the proofs. *Id.*

Plaintiff initially states that the trial court failed to give a concise statement of the reasons for ruling on the motion for JNOV, either in an order, opinion, or on the record as required by MCR 2.601(B)(3). This Court, faced with the same issue in *Badalamenti v Beaumont Hosp*, 237 Mich App 278, 284; 602 NW2d 854 (1999), held:

> Despite the trial court's apparent failure to engage in an appropriate review of the evidence in deciding defendants' motion and to issue a ruling accordingly, our review of this issue is not impeded. We conduct review de novo of the evidence presented at trial to determine if the trial court clearly erred in denying [the] motion for JNOV. . . . Our resolution of this issue turns on application of the facts to the law and on the evidence adduced, and we view all legitimate inferences from the evidence in the light most favorable to the plaintiff. . . . Only if the evidence so viewed fails to establish a claim as a matter of law is JNOV appropriate.

Similarly, in this case, even though the trial court did not give a concise statement of its reason for denying plaintiff's motion for JNOV, review of the issue is not impeded because the record must be reviewed de novo to determine if plaintiff is entitled to judgment as a matter of law.

We find that the jury's verdict is supported by the evidence adduced at trial. The jury found that Butler's conduct was negligent, but that his negligence was not a proximate cause of Skowronski's injuries. Proximate cause requires proof of two separate elements: (1) cause in fact, and (2) legal cause. *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994). Cause in fact generally requires showing that "but for" the defendant's action, the plaintiff's injury would not have occurred. *Id.*, p 163. Legal cause usually involves examining the foreseeability of the consequences of the defendant's actions, and whether a defendant should be held legally responsible for such consequences. *Id.* Cause in fact must first be adequately proven before legal cause becomes a relevant issue. *Id.*

Butler's testimony, largely corroborated by his front seat passenger Matthew Sisko, was that as he attempted to pass Gorski in a passing zone, Gorski sped up to match Butler's speed. It appeared to Butler and Sisko that Gorski was not going to allow Butler to return to the westbound lane. Butler admitted to increasing his speed to over seventy miles an hour, so that he could pass Gorski and return to the westbound lane. Butler knew that he was rapidly approaching a blind curve and that he was driving too fast to handle the curve. As Butler merged back into the westbound lane, he skidded on some gravel, and his vehicle fishtailed. Butler admittedly panicked and lost control of the vehicle so that he spun around 180 degrees, but was in the eastbound lane.

Lawrence Richarson, a Michigan State Police sergeant, was the accident reconstructionist and arrived at the scene a little over two hours after the accident occurred. Richarson testified that the skid marks attributable to the Mustang showed that it rotated and ended up facing eastbound in the eastbound lane of Warren. He also determined the speed of the Mustang to be seventy-two miles an hour. Richardson determined the speed of the Camaro to be about sixty miles an hour. He also noted that the front tires of the Camaro were non-factory, narrow, and bald. Richardson stated that his measurements did *not* support Gorski's testimony that he was only ten to twenty feet from the Mustang when it started to spin and "forced" Gorski to leave the roadway. Further, there was evidence that one of the Canton Township police officers measured the skid marks of the Camaro at 260 feet, while Richardson measured 166 feet. Although Richardson could not explain the discrepancy, he stated that if the Camaro left 260 feet of skid marks, its speed would have been closer to seventy miles an hour.

The jury could have found, based on the evidence, that Gorski's negligence was the sole cause in fact of plaintiff's injuries. Accepting Butler's and Sisko's testimony, the jury could have found that had Gorski not accelerated to prevent Butler from passing and returning to the westbound lane, Butler would not have had to accelerate to seventy miles an hour to pass and should have had ample time to complete the pass before entering the blind curve. Further, because Butler ended up in the eastbound lane, the jury could also have found that Gorski overreacted and did not have to leave the roadway. Even if there is evidence that supports a different view of events, that is not cause to vacate or reverse the jury's verdict. It was for the jury to make credibility determinations, to resolve conflicts in the evidence, to weigh the evidence, to accept or reject any of the evidence presented, and to draw any reasonable inferences from the evidence that it chose to draw. *Brisboy v Fibreboard Corp*, 429 Mich 540, 550; 418 NW2d 650 (1988); *Johnson v Corbet*, 423 Mich 304, 314; 377 NW2d 713 (1985); *Thomas v McGinnis*, 239 Mich App 636, 643-644; 609 NW2d 222 (2000).

Accordingly, there is evidence adduced at trial to support the jury's verdict regarding defendant Butler, therefore plaintiff is not entitled to judgment as a matter of law. The trial court, therefore, did not err in denying plaintiff's motion for JNOV or a new trial.

II

Plaintiff Skowronski next argues that the trial court abused its discretion when it allowed evidence of his drug and alcohol use or abuse. The trial court's decision to allow evidence of Skowronski's drug or alcohol use is reviewed for an abuse of discretion. *Chmielewski v Xermac, Inc*, 457 Mich 593, 614; 580 NW2d 817 (1998).

We find no abuse of discretion because the evidence was limited to the amount of drugs and alcohol that Skowronski consumed on the day of the accident. Further, this evidence was used to impeach Skowronski's testimony concerning his ability to perceive and recall the accident. Because the evidence of Skowronski's drug and alcohol use was limited in this manner, it was relevant in that it was used to impeach his credibility regarding his ability to perceive and recall the events surrounding the accident. MRE 401. For the same reason, the evidence was not substantially outweighed by the danger of unfair prejudice. MRE 403.

Accordingly, the trial court did not abuse its discretion in allowing evidence of Skowronski's drug and alcohol use in this limited manner.

Docket No. 219779

I

Plaintiff Belanger first argues, like plaintiff Skowronski, that the trial court erred in denying her motion for JNOV or a new trial because the jury's finding that Butler's actions were not a proximate cause of Juengel's death was not supported by any evidence at trial. For the reasons set forth under issue I in docket no. 219775, we disagree and affirm the trial court's denial of plaintiff Belanger's motion for JNOV or a new trial because the jury's verdict is supported by the evidence.

II

Plaintiff Belanger additionally argues that the trial court erred in denying her motion for JNOV or a new trial because the jury's verdict that Butler's actions were not a proximate cause of Juengel's death is inconsistent, illogical, incongruent, and self-contradictory.

Our Supreme Court has stated that a jury's verdict is to be upheld, even if it is arguably inconsistent, if there is an interpretation of the evidence that provides a logical explanation for the jury's findings. *Bean, supra,* p 34. In deciding a motion for a new trial, the court should make every effort to reconcile seemingly inconsistent verdicts. *Id.*

We find that the jury's verdict finding Butler to be negligent, but that his negligence was not a proximate cause of Juengel's death, is not inconsistent or illogical. As has been stated, the jury's verdict in this regard is supported by a view of the evidence adduced at trial. The fact that there may be other views of the evidence does not lead to a finding of an inconsistent or illogical jury verdict. The evidence supported a finding that Butler's actions were negligent because he was speeding, and because he panicked and lost control of his vehicle when it skidded on the gravel as he attempted to merge back into the westbound lane. However, the jury could also have found, as it did, that Gorski's actions were the sole proximate cause of Skowronski's and Juengel's injuries because Gorski created the dangerous situation by blocking Butler from returning to the westbound lane and by overreacting to Butler's spinning vehicle by steering too far to the right and leaving the roadway, which caused the vehicle to somersault.

Accordingly, the trial court did not err in denying plaintiff Belanger's motion for JNOV or a new trial because the jury's verdict is not inconsistent or illogical.

III

Plaintiff Belanger next argues that the trial court erred when it refused to provide the jury with a copy of the written instructions that the jury requested.

During its deliberations, the jury requested a written copy of the instructions, but the court indicated to the attorneys that its policy was to not give they jury a written copy of the instructions "because they start practicing law." The trial court then informed the jury that it would not provide a written copy of the instructions and that the jury should rely on its "collective memory" regarding the instructions. None of the lawyers objected in any manner to the trial court's handling of the jury's request for a written copy of the instructions.

MCR 2.516(B)(5) permits, but does not require, the trial court, within its discretion, to provide the jury with a full or partial set of written jury instructions. We cannot find any abuse of discretion in the manner in which the trial court handled the jury's request. Moreover, the issue is forfeited because of plaintiff's failure to object. MCR 2.516(C) ("A party may assign as error the giving of or the failure to give an instruction only if the party objects on the record"). Consequently, there is no error requiring reversal here.

IV

Lastly, plaintiff Belanger raises a two-fold issue concerning the award of mediation sanctions to the Butler defendants. Plaintiff Belanger first contends that the trial court erred in permitting paralegal fees to be included in the mediation sanctions. She also contends that the trial court erred in requiring the mediation sanctions to be satisfied from the proceeds that she received from defendant Gorski.

The trial court, in an order dated April 5, 1999, awarded mediation sanctions in the amount of $25,850 to defendant Butler. Of this amount, $2,475 was for paralegal fees. This Court has held that expenses generated by paralegals are not recoverable as a separate component of mediation sanctions. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 181; 568 NW2d 365 (1997). Accordingly, we order that the mediation sanctions be reduced by $2,475 because paralegal fees are not recoverable as a separate component of mediation sanctions.

The next question is whether the mediation sanctions should be paid by the estate from the judgment it received against defendant Gorski, as ordered by the trial court.

In *Mason v Cass Co Bd of Rd Comm'rs*, 221 Mich App 1; 561 NW2d 402 (1997), the plaintiff filed suit against two defendants, seeking damages under the wrongful death act. The jury returned a verdict in favor of one defendant, but found in favor of the plaintiff against the county defendant, less fifty percent for the plaintiff's decedent's comparative negligence. Because the plaintiff had rejected mediation evaluations that were higher than the jury's award, the plaintiff was subject to mediation sanctions to both defendants. The plaintiff argued that the mediation sanctions should not have been imposed against a judgment brought under the wrongful death act. This Court disagreed and affirmed the trial court's order offsetting the mediation sanctions against the jury verdict awarded in the plaintiff's favor. Similarly, in the

present case, the trial court ordered that the mediation sanctions be paid by the estate from the judgment it received against defendant Gorski.

Contrary to plaintiff Belanger's argument, *Colbert v Primary Care Medical, PC*, 226 Mich App 99; 574 NW2d 36 (1997), does not compel a different result. In *Colbert*, the plaintiff brought an action alleging medical malpractice against Primary Care, Dr. Joel Shavell, and Saratoga Community Hospital. The plaintiff settled with the hospital before trial and there was a subsequent jury verdict in favor of Primary Care and Dr. Shavell. Primary Care and Dr. Shavell then filed a lien against the settlement proceeds for costs and mediation sanctions, and the trial court granted the defendants' motion for costs and sanctions. This Court ultimately remanded the case to the trial court to determine whether the settlement award against the hospital should be treated the same as a judgment against the defendant or if the defendants should be treated as any other creditor, and, if so, what level of priority with respect to the award against the hospital. See *id.*, pp 104-105.

In the present case, unlike *Colbert*, there was no pretrial settlement against a codefendant and the claims against codefendants Butler and Gorski are completely intertwined. Plaintiffs' cases were tried against both defendants at trial. Further, plaintiff Belanger has not pointed to any statute, court rule, or case indicating that it was error for the trial court to order the defendant Butler's mediation sanctions be paid from the judgment obtained by the estate against defendant Gorski.

Accordingly, the trial court's order that mediation sanctions be paid by the estate from the judgment it received against defendant Gorski was not error; however, the award of mediation sanctions shall be reduced by $2,475 because paralegal fees are not recoverable as a separate component of mediation sanctions.

We affirm in docket no. 219775. We affirm the jury's verdict in docket no. 219779, but order that the mediation sanctions payable to defendant Butler by the estate be reduced by $2,475. The mediation sanctions are otherwise properly satisfied from the judgment received by the estate against defendant Gorski.

/s/ Richard Allen Griffin
/s/ Kathleen Jansen
/s/ Hilda R. Gage